

LINK:

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES – GENERAL

Case No.	CV 12-08074 BRO (MRWx)	Date	September 4, 2013
Title	ACTION STAR ENTERPRISE, CO. LTD. V. KAIJET TECHNOLOGY INT’L, LTD.		

Present: The Honorable	BEVERLY REID O’CONNELL, United States District Judge		
Renee A. Fisher	Not Present		N/A
Deputy Clerk	Court Reporter		Tape No.
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:	
Not Present		Not Present	

Proceedings: (IN CHAMBERS)

ORDER RE SUPPLEMENTAL BRIEFING

In patent law, it is a basic principle that a claim must be sufficiently definite. *See Star Scientific, Inc. v. R.J. Reynolds Tobacco Co.*, 537 F.3d 1357, 1371 (Fed. Cir. 2008). The requirement of claim definiteness is provided by 35 U.S.C. § 112, ¶ 2. That section states that claims must “particularly point[] out and distinctly claim[] the subject matter which the inventor . . . regards as the invention.” 35 U.S.C. § 112. A claim term would not be indefinite merely because it is difficult to construe; a term is indefinite only when it is so ambiguous that it is impossible to construe. *See Star Scientific*, 537 F.3d at 1371.

Upon reviewing the claims in Plaintiff’s Patent No. 8,099,535 B2 (the “535 Patent”), the Court queries whether they are sufficiently definite. Specifically, the Court’s concerns revolve around the first and sixth claims. There is no term in particular that strikes the Court as indefinite; rather, the claim structure’s use of decisional logic is troublesome. The Court recognizes that under 35 U.S.C. § 282 a patent must be presumed valid. Nevertheless, it appears one could theoretically step through claims 1 and 6 and, depending on what is judged as “needed to be operated,” not do anything at all.

Accordingly, the parties are ordered to provide the Court with concurrent supplemental briefing regarding the 535 Patent’s validity. Specifically, the parties should address whether the Patent’s claims are sufficiently definite.

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Each party’s brief is to be no longer than 12 pages, and must be submitted to the Court no later than Monday, September 23, 2013. To provide the Court the opportunity to consider the supplemental briefs prior to construing the Patent’s terms, the *Markman* hearing, currently scheduled for Monday, September 9, 2013, will be continued until Monday, October 7, 2013 at 10:30 am.

IT IS SO ORDERED.

Initials of Preparer

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